

IN THE MATTER OF THE CLAIM	* BEFORE KRISTIN E. BLUMER,
OF HERMAIN JOSEPH,	* AN ADMINISTRATIVE LAW JUDGE
CLAIMANT,	* OF THE MARYLAND OFFICE
AGAINST THE MARYLAND HOME	* OF ADMINISTRATIVE HEARINGS
IMPROVEMENT GUARANTY FUND	*
FOR THE ALLEGED ACTS OR	*
OMISSIONS OF	*
SOLON CARROLL	*
T/A S&S PRO SERVICES, LLC,	* OAH No.: LABOR-HIC-02-24-13772
RESPONDENT	* MHIC No.: 24 (75) 601

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
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PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On February 5, 2024, Hermain Joseph (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC)<sup>1</sup> Guaranty Fund (Fund) for reimbursement of \$17,500.00 for actual losses allegedly suffered as a result of a home improvement contract with Solon Carroll, trading as S&S Pro Services, LLC (Respondent).<sup>2</sup> On May 15, 2024, the

<sup>1</sup> The MHIC is under the jurisdiction of the Department of Labor.

<sup>2</sup> Md. Code Ann., Bus. Reg. §§ 8-401 to -411 (2024). Unless otherwise noted, all references to the Business Regulation Article are to the 2024 Replacement Volume of the Maryland Annotated Code.

MHIC issued a Hearing Order on the Claim. On May 16, 2024, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

On October 2, 2024, I held a hearing on the Webex videoconferencing platform.<sup>3</sup> Ernie Dominguez, Assistant Attorney General, represented the Fund. The Claimant represented herself. The Respondent did not appear. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice.<sup>4</sup>

On June 17, 2024, the OAH provided a Notice of Hearing (Notice) to the parties by certified mail and first-class mail.<sup>5</sup> The Notice stated that a hearing was scheduled for October 2, 2024, at 10:00 a.m., at the OAH located on 40 West Gude Drive, Suite 235, Rockville, Maryland 20850.<sup>6</sup> The Notice further advised the parties that failure to attend the hearing might result in "a decision against you." The OAH sent the Notice to the Respondent at his address of record. On or about July 24, 2024, the United States Postal Service (USPS) returned the certified mail sent to the Respondent marked as "not deliverable as addressed, unable to forward." The USPS did not return the Notice sent to the Respondent by first-class mail.

On September 10, 2024, the OAH received a letter from the Claimant in which she requested that the hearing be converted to a remote proceeding, because she had relocated to Florida and would have some difficulty returning to Maryland for the in-person hearing on October 2, 2024. On September 12, 2024, my administrative aide contacted the Assistant Attorney General and the Respondent to determine their position on the Claimant's request for a remote hearing. The Assistant Attorney General did not oppose the request. My administrative

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<sup>3</sup> Bus. Reg. §§ 8-407(a), 8-312; Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b).

<sup>4</sup> COMAR 28.02.01.23A.

<sup>5</sup> Bus. Reg. §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1).

<sup>6</sup> COMAR 09.08.03.03A(2).

aide called the Respondent but was not able to leave a voicemail, as the voicemail was not set up. She also emailed the Respondent with an email address provided by the Assistant Attorney General; the email was not returned as undeliverable and the Respondent never replied to the email.

As of September 16, 2024, having received no objection, I granted the Claimant's request to convert the hearing to a remote proceeding.<sup>7</sup> On September 16, 2024, the OAH provided a Notice of Remote Hearing (Second Notice) to the parties by certified mail and first-class mail.<sup>8</sup> The Second Notice stated that a hearing was scheduled for October 2, 2024, at 10:00 a.m., on the Webex videoconferencing platform and provided the instructions and Webex login information for the hearing.<sup>9</sup> The USPS did not return the Second Notice sent to the Respondent by first-class mail or by certified mail, nor did the USPS did not return the certified mail card sent to the Respondent with a signature.

The Respondent did not notify the OAH of any change of mailing address, email address, and/or telephone number.<sup>10</sup> The Respondent made no request for postponement prior to the date of the hearing.<sup>11</sup> I determined that the Respondent received proper notice, and I proceeded to hear the captioned matter.<sup>12</sup>

The contested case provisions of the Administrative Procedure Act, the Department of Labor's hearing regulations, and the Rules of Procedure of the OAH govern procedure.<sup>13</sup>

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<sup>7</sup> On September 16, 2024, I notified the parties of my decision regarding the Claimant's request to convert the hearing to a remote proceeding in a letter that was sent to them by email and first-class mail. On September 17, 2024, I sent the parties a revised letter, correcting a typographical error in the original letter, also by email and first-class mail. The emails and letters sent to the Respondent were not returned by email or the USPS.

<sup>8</sup> Bus. Reg §§ 8-312(d), 8-407(a); COMAR 28.02.01.05C(1).

<sup>9</sup> COMAR 09.08.03.03A(2).

<sup>10</sup> COMAR 28.02.01.03E.

<sup>11</sup> COMAR 28.02.01.16.

<sup>12</sup> COMAR 28.02.01.05.

<sup>13</sup> Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021 & Supp. 2024); COMAR 09.01.03; COMAR 28.02.01.

## **ISSUES**

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of the compensable loss?

## **SUMMARY OF THE EVIDENCE**

### **Exhibits**

I have attached a complete Exhibits List as an Appendix.

### **Testimony**

I accepted the Claimant's direct testimony in written form pursuant to her request for accommodation filed on September 25, 2024.<sup>14</sup> Assistant Attorney General Dominguez cross-examined the Claimant at the hearing. The Claimant did not present other witnesses.

The Respondent did not appear and therefore, did not present any witnesses.

The Fund did not present any witnesses.

## **PROPOSED FINDINGS OF FACT**

I find the following facts by a preponderance of the evidence:

1. At all relevant times, the Respondent was a licensed home improvement contractor under MHIC license number 01-116472.
2. At all relevant times, the Respondent's corporate entity was a licensed home improvement contractor under MHIC license number 05-136195.
3. At all relevant times, the Claimant owned and resided in a home located in Silver Spring, Maryland (the Residence). The Claimant does not own any other residential properties in Maryland.

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<sup>14</sup> COMAR 28.02.01.09C; COMAR 28.02.01.21F.

4. On or about August 30, 2023, the Claimant entered into an oral contract with the Respondent for the Respondent to renovate her kitchen and install new flooring in a half-bathroom next to the kitchen (Contract).

5. The scope of the work in the Contract list of work included but was not limited to: demolition of the kitchen and removal of debris, installation of new kitchen cabinets and countertops, installation of updated plumbing, installation of vinyl flooring in the kitchen and half bathroom, and painting.

6. The agreed-upon Contract price was \$15,000.00.

7. The Respondent used computer software to plan the kitchen renovation. Upon review of the plan, the Claimant noted that her requests about the pantry kitchen and the installation of a backsplash were not included.

8. The Claimant raised this issue with the Respondent, who explained that the software did not allow him to include that information; he assured her that the pantry and the installation of a backsplash were included in the renovation.

9. The Claimant initially requested a tile floor but changed her mind after a discussion about it with the Respondent. The Claimant agreed with the Respondent's proposal to install vinyl flooring instead, which would cost less and leave sufficient funds for the installation of tile for the backsplash. This change was not documented in writing and did not result in a change to the Contract price.

10. The Contract did not identify a start date, a completion date, or set any schedule for the completion of the work or payments for the work.

11. In September 2023, on a date or dates not specified in the record, the Claimant paid the Respondent \$11,500.00 pursuant to the Contract.

12. On or about September 12, 2023, the Respondent began the work.

13. During September and October 2023, the Respondent demolished the existing kitchen, including the bulkhead, and began to install the vinyl flooring. The Respondent also repaired the drywall behind the kitchen sink.

14. On a date not specified in the record, the Claimant walked on some of the vinyl flooring that the Respondent had already installed and felt “uncertain” about the way it felt underfoot; she later learned that the Respondent had improperly installed the flooring over foam underlayment.

15. On or about October 19, 2023, the Claimant questioned the Respondent about the cabinets that he had ordered for the kitchen because the Claimant believed that the brand of cabinets that he ordered was not the same brand that he had shown her as an option and that she requested.

16. On or about November 2, 2023, the Respondent sent the Claimant a text message indicating that he “ran into [a] problem” and stated that he could deliver the cabinets “which are close to the amount paid and you can get someone else to finish the project.”<sup>15</sup>

17. On or about November 2, 2023, the Claimant responded to the Respondent’s text message seeking clarification and requesting that the Respondent finish the project.

18. Between November 2 and 7, 2023, the Respondent did not return to the Residence or attempt to return to finish the project.

19. On or about November 7, 2023, the Respondent called the Claimant and informed her that he was dissolving his business.

20. The Respondent did not complete or attempt to complete the work under the Contract after November 7, 2023.

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<sup>15</sup> Clmt. Ex. 0001, p. 19.

21. At the time the Respondent abandoned the Contract, the Respondent had installed approximately one-third of the vinyl flooring. The Respondent installed the flooring incorrectly by failing to remove the existing linoleum prior to installation, by failing to prepare and clean the subfloor, and by using improper foam underlayment and glue with what was installed. The Respondent removed the toilet, pedestal sink, and door in the half-bathroom in preparation for installing the vinyl flooring but failed install the flooring and failed to reinstall those items in that room before abandoning the job.

22. At the time the Respondent abandoned the Contract, the Respondent had not removed the debris from the kitchen. The kitchen cabinets, countertops, appliances, and updated plumbing had not been installed. The Respondent left holes in the kitchen walls and painted the walls and ceiling haphazardly and incompletely.

23. At the time the Respondent abandoned the Contract, the Respondent left electrical outlets pulled out of receptacles and left lighting wiring and equipment exposed. The Respondent failed to install outlets and switches and improperly installed recessed lighting. The Respondent improperly installed a flexible ventilation duct for the microwave.

24. Between November 7 and November 16, 2023, the Claimant consulted with various contractors about completing the project.

25. On or about November 16, 2023, the Claimant contracted with AM Construction and Renovation to complete the kitchen renovation, including: installation of cabinets, flooring, countertops, and backsplash; replace and complete the installation of the flooring; prepare and paint the walls in the kitchen and half bathroom; correct and complete the electrical work and ventilation duct for the microwave; complete the plumbing work, including reconnecting the toilet and installing a new vanity in the half bathroom; stain the pantry shelves; install cabinet hardware; and install baseboards and floor transitions.

26. The Claimant paid AM Construction and Renovation a total of \$21,350.00 to complete the work.

27. The Claimant's cost for the work done by AM Construction and Renovation included replacement of the pedestal sink in the half bathroom with a vanity and sink, which was not included in the Contract.

## DISCUSSION

### LEGAL FRAMEWORK

The Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence.<sup>16</sup> To prove a claim by a preponderance of the evidence means to show that it is "more likely so than not so" when all the evidence is considered.<sup>17</sup> An owner may recover compensation from the Fund "for an actual loss that results from an act or omission by a licensed contractor."<sup>18</sup> "[A]ctual loss' means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement."<sup>19</sup>

By statute, certain claimants are excluded from recovering from the Fund altogether. In this case, there are no such statutory impediments to the Claimant's recovery. The claim was timely filed, there is no pending court claim for the same loss, and the Claimant did not recover the alleged losses from any other source.<sup>20</sup> The Claimant resided in the home that is the subject of the claim and does not own any other residential properties in the State of Maryland.<sup>21</sup> The Contract did not include an agreement to submit disputes to arbitration.<sup>22</sup> The Claimant is not a

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<sup>16</sup> Bus. Reg. § 8-407(e)(1); State Gov't § 10-217 (2021); COMAR 09.08.03.03A(3).

<sup>17</sup> *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

<sup>18</sup> Bus. Reg. § 8-405(a); *see also* COMAR 09.08.03.03B(2) ("The Fund may only compensate claimants for actual losses . . . incurred as a result of misconduct by a licensed contractor.").

<sup>19</sup> *Id.* § 8-401.

<sup>20</sup> *Id.* §§ 8-405(g), 8-408(b)(1).

<sup>21</sup> *Id.* § 8-405(f)(2).

<sup>22</sup> *Id.* §§ 8-405(c), 8-408(b)(3).



relative, employee, officer, or partner of the Respondent, and is not related to any employee, officer, or partner of the Respondent.<sup>23</sup>

For the following reasons, I find that the Claimant has proven eligibility for compensation from the Fund.

#### ANALYSIS

The Claimant asserted that the Respondent completed some of the work in the Contract, but that the work was inadequate and unworkmanlike, and that the Respondent failed to complete the work as agreed to in the Contract.

The Fund argued that the Claimant established that she paid the Respondent pursuant to the Contract, that the Respondent did not complete the work contracted for, and that he abandoned the job without justification. The Fund further asserted that the Claimant established that she paid another contractor to complete the work required under the Contract. The Fund noted that there was some question about the value of some of the work done by AM Construction and Renovation that was not part of the Contract but argued that the Claimant cannot recover more than the amount paid to the Respondent; therefore, the Fund recommended an award of \$11,500.00 to the Claimant.

The Claimant has met her burden to demonstrate that she sustained an actual loss as a result of the Respondent's acts or omissions, and is, therefore, eligible for compensation from the Fund. The Claimant's assertions were undisputed and supported by documentary evidence. Therefore, I find that the Respondent completed some work under the Contract, that the work completed was inadequate and unworkmanlike, and that the Respondent then abandoned the Contract and failed to complete the kitchen renovation and installation of flooring in the kitchen and half bathroom. I further find that the Claimant contracted with another contractor to correct

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<sup>23</sup> *Id.* § 8-405(f)(1).

the Respondent's unworkmanlike and inadequate work, to finish the work specified in the Contract, and paid them a total of \$21,350.00 to complete the work.

### *Compensation*

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest.<sup>24</sup> The MHIC's regulations provide three formulas to measure a claimant's actual loss, depending on the status of the contract work.<sup>25</sup>

The first formula is applicable when a contractor abandons the contract without performing any work.<sup>26</sup> In this case the Respondent performed some work, and thus, the first formula is clearly not applicable here.

The second formula applies when "the contractor did work according to the contract and the claimant is not soliciting another contractor to complete the contract . . . ."<sup>27</sup> Under this circumstance, "the claimant's actual loss shall be the amount which the claimant paid to the original contractor less the value of any materials or services provided by the contractor."<sup>28</sup> The second formula does not apply in this case because the Claimant hired another contractor to complete the work abandoned under the Contract.

The third formula is applicable when the Respondent performed some work under the Contract, and the Claimant retained other licensed contractors to complete that work.

Accordingly, the following formula appropriately measures the Claimant's actual loss:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor

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<sup>24</sup> Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

<sup>25</sup> COMAR 09.08.03.03.B(3).

<sup>26</sup> COMAR 09.08.03.03B(3)(a).

<sup>27</sup> COMAR 09.08.03.03B(3)(b).

<sup>28</sup> *Id.*

under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.<sup>[29]</sup>

Applying the third formula to this case, the Claimant's actual loss is as follows:

Amount paid to the Respondent:	\$11,500.00
Plus amount paid to complete work:	+\$21,350.00
<u>Less the Contract price:</u>	<u>- \$15,000.00</u>
<b>Actual Loss Total:</b>	<b>\$17,850.00</b>

Effective July 1, 2022, a claimant's recovery is capped at \$30,000.00 for acts or omissions of one contractor, and a claimant may not recover more than the amount paid to the contractor against whom the claim is filed.<sup>30</sup> Although the Claimant did not provide information about the added cost to the work completed by AM Construction and Renovation – specifically, the cost of the vanity for the half bathroom and any additional labor costs to install it, rather than reinstalling the pedestal sink that the Respondent had removed – I find this missing information to be immaterial to the calculation. For the calculation to result in an actual loss to the Claimant of less than \$11,500.00, the amount paid to the Respondent, the cost to remedy the Respondent's unworkmanlike and inadequate work and complete the Contract would have to total \$14,999.00 or less,<sup>31</sup> a difference of at least \$6,351.00, which is unreasonably high to cover the costs of purchase and installation of a vanity. In this case, the Claimant's actual loss of \$17,850.00 exceeds \$11,500.00, the amount paid to the Respondent. Therefore, the Claimant's recovery is limited to \$11,500.00.

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<sup>29</sup> COMAR 09.08.03.03B(3)(c).

<sup>30</sup> Bus. Reg. § 8-405(e)(1), (5); COMAR 09.08.03.03B(4). On or after July 1, 2022, the increased cap is applicable to any claim regardless of when the home improvement contract was executed, the claim was filed, or the hearing was held. See *Landsman v. MHIC*, 154 Md. App. 241, 255 (2002) (explaining that the right to compensation from the Fund is a "creature of statute," these rights are subject to change at the "whim of the legislature," and "[a]mendments to such rights are not bound by the usual presumption against retrospective application").

<sup>31</sup> The amount paid to the Respondent, \$11,500.00, plus \$14,999.00, equals \$26,499.00, minus the Contract price of \$15,000.00, results in an actual loss of \$11,499.00.

### **PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$11,500.00 as a result of the Respondent's acts or omissions.<sup>32</sup> I further conclude that the Claimant is entitled to recover \$11,500.00 from the Fund.

### **RECOMMENDED ORDER**

I **RECOMMEND** that the Maryland Home Improvement Commission:

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$11,500.00; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>33</sup> and

**ORDER** that the records and publications of the Maryland Home Improvement Commission reflect this decision.

December 16, 2024  
Date Decision Issued

*Kristin E. Blumer*  
\_\_\_\_\_  
Kristin E. Blumer  
Administrative Law Judge

KEB/ckc  
#215375

<sup>32</sup> Md. Code Ann., Bus. Reg. §§ 8-401, 8-405 (2024); COMAR 09.08.03.03B(3)(c).

<sup>33</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2024); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 24<sup>th</sup> day of April, 2025, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.***

**Wm. Bruce**

**Quackenbush**

***Wm. Bruce Quackenbush***

***Chairman***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***